

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
Case No. 23-11069 (CTG)
YELLOW CORPORATION, et al.,
(Jointly Administered)
Re: Docket No. 4958
Courtroom No. 7
Debtors. 824 North Market Street
Wilmington, Delaware 19801
Thursday, November 21, 2024
9:30 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE CRAIG T. GOLDBLATT
UNITED STATES BANKRUPTCY JUDGE

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Therewith, and (IV) Certain Dates
With Respect Thereto [Filed:
10/17/24] (Docket No. 4582)

16

1 (Proceedings commenced at 9:30 a.m.)

2 THE CLERK: All rise.

3 THE COURT: Please be seated. Good morning, all.

4 We are here in In Re Yellow Corporation, Case No. 23-11069.

5 Ms. Smith.

6 MS. SMITH: Good morning, Your Honor. Allyson

7 Smith, Kirkland & Ellis, for the debtors.

8 We just have two items on the agenda for today.

9 It's the status conference for the ongoing MEPP claims
10 rejection litigation and then, of course, approval of our
11 disclosure statement. If all right with the Court, we would
12 propose proceeding first with the status conference.

13 THE COURT: Certainly.

14 MS. SMITH: Great. Then I am going to cede the
15 podium to my partner, Ms. Chan.

16 THE COURT: Okay, very well.

17 MS. CHAN: Good morning, Your Honor. Shirley Chan
18 from Kirkland & Ellis for the debtors.

19 We appreciate the set of questions that Your Honor
20 posed in your order regarding the acceleration, default, and
21 discounting issues. We agree that those are important
22 questions that should be addressed now. We will add that
23 while Your Honor's order was directed to the disputes between
24 the debtors and the SFA funds, because those issues apply to
25 the non-SFA funds as well, we all agree to brief everything

1 on the same schedule.

2 THE COURT: Because you think I am going to be
3 consistent and have the same rule apply in both cases?

4 MS. CHAN: Yes.

5 (Laughter)

6 THE COURT: That was intended to be a joke, sorry.

7 MS. CHAN: So, we have met and conferred two days
8 ago and agreed on a briefing schedule. Specifically, we have
9 agreed that December 13th will be the deadline for opening
10 briefs and any facts that the funds wish to put in the record
11 regarding whether and when they declared a security default.
12 Then January 10th will be the deadline for opposition briefs.
13 January 21st will be the deadline for replies. We would ask
14 the Court to hold the hearing on the motions shortly
15 thereafter and before confirmation.

16 THE COURT: So that makes eminent sense, like
17 getting these things decided in an orderly and prompt manner
18 and trying to get folks decisions to the best of my ability
19 before, you know, getting teed up or resolved around
20 confirmation makes good sense.

21 Let me just -- just for the sake of making sure I
22 understand my calendar, you are looking for an argument -- so
23 you are looking for a confirmation hearing on February 4th,
24 right?

25 MS. CHAN: That's right.

1 THE COURT: So, would you like argument on these
2 motions?

3 MS. CHAN: Our replies would be due January 21st,
4 so any time between January 21st and February 4th would be
5 fine.

6 THE COURT: Okay, so let's look at the calendar.
7 I just want to give myself a couple of days with your reply.

8 So, let me ask this question, and only Ms. Smith
9 knows all of these dates like off the top of her head, so I
10 have on hold the 21st to 23rd for a trial, is that this
11 dispute or is that a different dispute?

12 MS. CHAN: That is the trial for the non-SFA funds
13 but given that we have agreed to this briefing schedule with
14 replies due on the 21st we expect to fish out that trial.

15 THE COURT: Okay. I just want to make sure that --
16 in connection with setting this schedule, which I am very
17 happy to do, I just want to develop an understanding of what
18 I freed up on my calendar so that I am organized. But I
19 think that in light of what you said Tuesday the 28th of
20 January.

21 Ms. Barksdale, am I making a mistake there?

22 MS. BARKSDALE: No, Your Honor.

23 THE COURT: Does that work for the parties?

24 MS. CHAN: That works for the debtors.

25 THE COURT: Okay. So, I think your briefing

1 schedule is fine. Happy to ---

2 MS. CHAN: I will --

3 MR. SULLIVAN: We didn't hear the date.

4 THE COURT: I'm sorry. I suggested Tuesday,
5 January 28th, let's say at -- do the parties have a
6 preference between 9:30 and 10? I tend to start things at 10
7 if people are going to be coming in from taking an early
8 train but if people are going to be here anyway, I am happy
9 to start earlier, whatever your preference.

10 MS. CHAN: 10 o'clock works for the debtors.

11 THE COURT: Okay, very well. So, why don't we --
12 Mr. Sullivan, is 10 o'clock agreeable?

13 MR. SULLIVAN: I don't know from everybody. I
14 think there are a few comments that are going to come in on
15 this general topic.

16 THE COURT: I see.

17 MR. SULLIVAN: So, I don't want to get too far
18 ahead of myself.

19 THE COURT: Look, why don't we pencil in that we
20 will have a hearing at 10 o'clock on the 28th. The parties
21 should, obviously, confer about the schedule. You should
22 submit an order under certification. If there are tweaks
23 along the way that is fine with me. Let's try to set it for
24 the 28th so if that doesn't work and we need to hop on the
25 phone to get to a date then I am happy to do it that way.

1 Does that work for you?

2 MS. CHAN: That works for us. I will also add
3 that when we met and conferred with the funds two days ago we
4 have also agreed to brief the issues relating to claims
5 subordination on the same schedule.

6 THE COURT: Okay. This is subordination as I
7 understand it. This is not equitable subordination as like a
8 bankruptcy lawyer, but it's the provision of ERISA that
9 provides in certain circumstances for reducing or
10 subordinating part of the claim, is that -- do I have that
11 right?

12 MS. CHAN: Yes.

13 THE COURT: So, that will be addressed on the same
14 schedule.

15 MS. CHAN: Thank you. So --

16 THE COURT: I take it that is agreed as among the
17 parties?

18 MS. CHAN: Yes.

19 THE COURT: Okay, very well.

20 MS. CHAN: So, we will work with counsel to make
21 sure we agree on a hearing date and time and we can submit a
22 stipulation.

23 THE COURT: That would be great. Now just -- I
24 apologize for having lost track of various of the pieces, but
25 I had understood there was a non-SFA summary judgment motion

1 that was already sort of, if not fully briefed, nearly fully
2 briefed with an argument coming up. Do I -- am I confused?

3 Mr. Sullivan, let me give you the chance to be
4 heard.

5 MR. SULLIVAN: Thank you. Good morning, Your
6 Honor. Bill Sullivan on behalf of Local 705 Pension Fund.

7 Local 705 Pension Fund filed a motion for summary
8 judgment at the end of August. We also filed, in connection
9 with the reconsideration, a pleading.

10 THE COURT: Right, that I treated as an amicus.

11 MR. SULLIVAN: Right. So, no response has been
12 filed. There was a deadline of October 22nd, it was not met.
13 Where it stands now this was discussed on the meet and
14 confer. My co-counsel, John Donaro (phonetic), spoke on the
15 meet and confer. What Local 705 wants is a response to the
16 pleading by November 26th. They raised both legal issues and
17 they raised factual issues that are specific to them. The
18 issue is they don't believe they are going to need to go
19 forward with a future briefing because of how they presented
20 their motion.

21 The second part of that proposal was if the
22 debtors decide that they do need to respond and it raises
23 issues that fall into the general category being briefed
24 beyond that they won't file a reply and it can be moved to
25 there. Local 705 believes they are entitled to a specific

1 response as to the disputed issues on their motion because
2 both from a legal and a factual basis they don't believe --

3 THE COURT: So, look, let's slow down here. I am
4 not sure how it came to be that you filed a motion in August
5 and here we are in November and there is not a response, but
6 that is what it is and this is the first I am hearing of it.
7 So, I am not inclined to order the debtor to file a response
8 within five days.

9 I do think that setting a rational schedule -- so,
10 Ms. Chan, is your position that this should be folded into
11 the schedule that you have, otherwise, addressed?

12 MS. CHAN: Yes. Our position is that Local 705
13 agreed to the various amended scheduling orders that pushed
14 out the dispositive motion deadlines and --

15 THE COURT: So, look, I don't know enough to know
16 whether you agreed or didn't agree.

17 Let me ask you this, Mr. Sullivan, what prejudice
18 would you suffer if -- I want to give people decisions
19 promptly and in a way that moves the case -- my principle
20 objective is to move the case forward -- well, I think my
21 principle objective is to get it right, but moving the case
22 forward is also an important objective. So, let me ask this
23 question: What prejudice would you suffer if we just folded
24 this into the existing schedule and I could consider all of
25 this at one time rather than piecemeal.

1 MR. SULLIVAN: To be fair, Your Honor, when I
2 spoke to my co-counsel I said, really, this is, you know, a
3 decision for you whether you think more or less briefing is
4 appropriate. We certainly want to respect the Court's time
5 and the Court's effort. The prejudice here is we don't
6 believe there is a legitimate argument to be made and that
7 that should be fleshed out now that it should be part of the
8 briefing but the prejudice would be that if we agree now we
9 have to participate in the future briefing and further
10 expense into January when they don't believe that is
11 necessary.

12 THE COURT: So, look, I hear that and respect
13 that. If you had come to me in August and said we have got a
14 single issue, and its simple, and we want it resolved
15 promptly and it will get us out of the case I would have
16 entertained that notion but given that we are here at the end
17 of November and we are talking about a January argument in
18 any event, I don't think as a practical matter there is going
19 to be some date in between where I am going to get you a
20 decision that will have that effect.

21 So, it's not an unfair ask in principle but just
22 given the world in which we are living and the number of
23 things that are coming down the pike here I don't see a world
24 in which I save you the hassle by getting you a decision. So,
25 I have no problem with your asking for it, I just don't

1 think, given my calendar right now, it's not -- it's a thing
2 I would like to try to do when I can but I just don't think I
3 can. So, I think it makes sense to fold it in and we will
4 tackle it all together and we will get you a decision as
5 promptly as we can.

6 MR. SULLIVAN: We certainly will respect that. We
7 don't need to rehash the procedural -- we have a strong
8 disagreement with what happened, but we want to respect your
9 schedule and that is fine, Your Honor.

10 THE COURT: Okay, very well. I appreciate that so
11 thank you.

12 Ms. Chan, from -- oh, Mr. Berliner.

13 MR. BERLINER: Sorry, Your Honor. Briefly, Brad
14 Berliner on behalf of Central States.

15 The only other thing I wanted to address with the
16 Court is in addition to resolving these two issues we have
17 just discussed this morning, Central States intends to weave
18 into the brief an argument on this contribution guarantee
19 claim Central States has. Debtors objected to it. The facts
20 are undisputed and it's a \$900 million plus claim that we
21 think has a material effect upon the estate. So, we intend
22 to cover that along with these other two issues.

23 THE COURT: Ms. Chan, any objection from the
24 debtor to having that addressed on summary judgment at the
25 same time?

1 MS. CHAN: No objection.

2 THE COURT: Okay. So, you guys will all work out,
3 sort of, a briefing schedule, scheduling order that will
4 provide for I will get these briefs and it will be fully
5 briefed around January 21st, and we will have argument on
6 January 28th, and I will do my best to get you a decision
7 resolving disputes as soon as I can.

8 MR. BERLINER: Thank you, Your Honor.

9 THE COURT: So can we just pause for a moment and
10 this -- I want to make sure that I understand my calendar and
11 what is going forward and what is not. So, this is not
12 intended to quiz Ms. Smith. So, what I have -- I now have
13 trial on the WARN Act disputes beginning December 9th, right?

14 MS. SMITH: Yes. I believe it's the 9th, 10th and
15 20th.

16 THE COURT: 9th, 10th and 20th, okay. Why don't I
17 just ask the question this way, Ms. Smith, what else should
18 now be on the calendar other than confirmation hearing and
19 the summary judgment argument on the non-SFA claims that we
20 just discussed?

21 MS. SMITH: We have a December 16th omnibus
22 hearing which I believe also is summary judgment unless I got
23 that wrong.

24 MS. CHAN: No, that is correct.

25 MS. SMITH: Okay, summary judgment on the non-SFA.

1 THE COURT: Hold on a second, that is where I am
2 confused because I thought we were just setting --

3 MS. CHAN: Right. So, the schedule we just
4 discussed is for the default subordination and contribution
5 guarantee claims. The December 16th date is for summary
6 judgment motions that debtors and certain funds have already
7 filed regarding --

8 THE COURT: Got it. Okay, so that is where I was
9 confused. My apologies for being the slowest one in the
10 room; though, those of you who are here a lot are used to
11 that. So, basically, we have got separate partial summary
12 judgment motions, one of which goes forward on the 16th on a
13 number of what I believe are, sort of, calculation issues and
14 then another summary judgment motion on the 21st of January -
15 - sorry, the 28th of January on the issues that you just
16 mentioned.

17 MS. CHAN: That is correct.

18 THE COURT: What would be super helpful, just for
19 me, is when you submit your agreed order if you could just,
20 in that order identify the issues that will be the subject of
21 the motions just so that when I look at it I can, at least,
22 begin to think about how the -- I just want to make sure I am
23 not doing anything inadvertent on the motion that is set for
24 -- I'm sorry, so what did we say, December 16th.

25 MS. SMITH: 16th.

1 THE COURT: Right. So, what we have got on
2 December 16th is a summary judgment motion on those issues
3 and that is set for 10 o'clock on the 16th. I just wanted to
4 make sure that I'm keeping the different issues straight.
5 There are a lot of different moving parts and I want to make
6 sure I have got it right. That is very helpful. Thank you
7 for your patience.

8 MS. CHAN: Thank you, Your Honor.

9 THE COURT: Okay.

10 MR. LEVIN: Good morning, Your Honor. Sam Levin
11 from Groom Law Group.

12 I just wanted to add two clarifications and also
13 thank the debtors for working out a schedule with us. With
14 respect to the group of seven SFA funds that we represent I
15 just wanted to clarify that we have an agreement between the
16 parties that basically every issue that the parties believe
17 are still outstanding will be included in that summary
18 judgment briefing that there aren't any remaining issues that
19 the parties aren't pushing forward.

20 THE COURT: Okay.

21 MR. LEVIN: Then with respect to one of the non-
22 SFA funds we represent the IAM national fund. We have a
23 separate agreement with debtors that we are not moving
24 forward on that same schedule and we hope to be able to reach
25 a resolution.

1 THE COURT: Okay, very well. Thank you.

2 MR. LEVIN: Thank you, Your Honor.

3 THE COURT: Okay. With respect to the -- this is
4 very helpful, so I appreciate all of this clarification.
5 With respect to status and scheduling is there anything else
6 that I need to understand?

7 (No verbal response)

8 THE COURT: Okay, very well. Ms. Smith.

9 MS. SMITH: Thank you, Your Honor. Allyson Smith,
10 Kirkland & Ellis, for the debtors.

11 Just a really quick detour before I got into the
12 disclosure statement, not to throw something else at you.

13 THE COURT: Okay. That is what I am here for.

14 MS. SMITH: We do appreciate Your Honor's guidance
15 on the docket last night with respect to the correspondence
16 that we submitted to your Chambers. We did have one question
17 come up and to the extent you are able to shed light --

18 THE COURT: I will do my best.

19 MS. SMITH: -- specifically with respect to the
20 partial summary judgment and whether that applies to certain
21 or all of the affirmative defenses available or unavailable
22 to the debtors. If you don't want to provide --

23 THE COURT: No. Look, I want to be as helpful as
24 I can. Its unusual to issue the docket entry I did. I
25 decided in the scheme of things this doesn't need to be a

1 murder mystery and that there is -- and that it made more
2 sense to keep the case moving then to deliver an opinion I
3 will drop on you all at once. Again, you know, if as I go --
4 until its done its not done. So, if something happens and I
5 change my mind and the shape of the case changes we will have
6 to deal with that, but it seems to me I should do my best to
7 let you all prepare for trial as best we can.

8 So, with respect to the affirmative defenses, as I
9 understand it, right, there are the two statutory affirmative
10 defenses and the faltering business and unanticipated
11 business circumstances. Then there is the, sort of,
12 liquidating fiduciary defense which you could have a
13 conversation of whether that is an affirmative defense or
14 not, but the argument is you are not an employer because you
15 are a liquidating fiduciary.

16 What I am saying is everyone should proceed to
17 trial on the assumption that I will grant the plaintiffs
18 summary judgment motion about the unavailability of those
19 defenses. Does that answer your question?

20 MS. SMITH: Yes. It does, Your Honor.

21 THE COURT: Okay.

22 MS. SMITH: So, moving to the disclosure statement
23 and, again, we did want to thank the Court for its patience.
24 We got our documents on file a little bit later then intended
25 yesterday.

1 THE COURT: So, I have had a chance to read the
2 reply brief. We are caught up and I think that all we need
3 is an order which I think is being uploaded granting leave to
4 file the reply and we're going to grant that because I have,
5 in fact, read it. So, I think I am, at least, as up to speed
6 as I am going to be.

7 MS. SMITH: Okay. Obviously, to the extent you
8 need redlines or drafts we have those available and can
9 provide them.

10 So, perhaps before jumping into the specifics I
11 will just give a fresh refresher as to where we are and what
12 we had expected to occur between now and the confirmation
13 hearing in early February. As Your Honor will recall we
14 originally filed our plan and disclosure statement in early
15 September. At that time the plan provided flexibility to
16 potentially allow the debtors to restructure as a LeaseCo or
17 some other similar entity.

18 Unfortunately, following the summary judgment
19 ruling on the MEPP claims objection that is no longer a
20 viable option and the debtors pivoted to a straight plan of
21 liquidation that will monetize remaining assets and
22 distribute that value to creditors. A revised plan and
23 disclosure statement along with a disclosure statement motion
24 and solicitation materials was filed in early October
25 reflecting that revised structure.

1 Since then, we have continued to work with parties
2 to garner consensus and while there are certain key terms
3 unresolved we have made tremendous progress to date. To that
4 end we filed a revised plan and disclosure statement
5 including revised liquidation analysis last night. Those are
6 at Docket Nos. 4974 and 4975 respectively, along with a
7 revised order and revised solicitation materials at Docket
8 No. 4977. Then as you saw, our reply at Docket No. 4978.

9 So, assuming that we are successful today in
10 getting approval of the disclosure statement we will complete
11 solicitation of the -- or service of the solicitation
12 packages by early December. We did build in some time to
13 account for the Thanksgiving holiday with a goal to be in
14 front of Your Honor on February 4th for confirmation.

15 We are proposing a slightly longer solicitation
16 period to account for the number and nature of voting parties
17 as well as the numerous holidays this time of year. We want
18 to be sure and think its prudent to make sure parties do have
19 sufficient time. Concurrently, with this timeline we are
20 proceeding with what we have been referring to as phase two
21 of the sale process for our remaining real estate assets. The
22 initial indication of interest deadline passed on October
23 18th. We filed a supplemental notice of further deadlines
24 earlier this week and those deadlines propose a January 6th
25 bid deadline, an auction in mid-January, and sale hearing on

1 January 30th. So for better or worse you will be seeing a
2 lot of us in January.

3 THE COURT: So, we will hold the January 30th date
4 which was the original confirmation hearing.

5 MS. SMITH: Yes.

6 THE COURT: Got it. Okay, understood. That is
7 helpful.

8 MS. SMITH: Thank you, Your Honor. Finally, we
9 are, of course, continuing to prosecute our claims objections
10 which we just walked through. So, while we are pleased to be
11 moving these cases to resolution, obviously, quite a bit of
12 work still to be done.

13 Again, the fact that we did file revised documents
14 late, I will very briefly walk through some of the revisions.
15 In addition to a number of informal comments the debtors
16 received three formal objections: Central States to which
17 other multi-employer pension plans joined, an objection from
18 the U.S. Trustee, and a limited objection from MSN and Mobile
19 Street.

20 THE COURT: Ms. Smith, can I make the following
21 suggestion?

22 MS. SMITH: Yes.

23 THE COURT: My -- in terms of, you know, getting
24 to a disclosure statement that contains adequate information
25 and apprises creditors fairly of what they need to know in

1 order to cast an informed vote it seems to me that -- it has
2 got to be the case that we can get to such a document today.
3 What I think would be most helpful would be -- apologies if
4 this is a little -- it's not that unconventional, I have seen
5 this before, is that we just sort of go through it and, you
6 know, we should all be working off of the same document and
7 as we go through it if there is someone who says it says X
8 but it should also say Y we can just deal with that in real
9 time and I can resolve whatever disputes there are and we can
10 just, sort of, walk through the document and order.

11 Is there any reason we shouldn't proceed that way?

12 MS. SMITH: Only because I think I am going to
13 make your life easier.

14 THE COURT: You are going to say you have solved
15 it all for me.

16 MS. SMITH: We have solved it all for you.

17 THE COURT: Okay.

18 MS. SMITH: The one --

19 THE COURT: Thank you.

20 MS. SMITH: -- caveat is with respect to the
21 additional disclosures requested by MFN and Mobile regarding
22 the IBT litigation in Kansas. We are fine tuning that with
23 MFN and the IBT. We have spoken to both parties. We are
24 committed to all working together to work that out, but I
25 don't know that we need to go through it in real time.

1 THE COURT: So, look, I have been through the
2 redlines and my reaction was I thought it resolved everything
3 but I wasn't -- I didn't want to step on anyone's rights if
4 someone wanted to be heard that there were issues with the
5 document. So, what you are saying is there is nobody in the
6 courtroom today who wants to stand up and argue that the
7 document should include words that it doesn't include.

8 MS. SMITH: That is the debtors understanding,
9 Your Honor.

10 THE COURT: Okay. Now with respect to the
11 disclosures as they relate to the releases, do I have an
12 issue there?

13 MS. SMITH: I don't believe so, although there is
14 an issue -- there are certain objections raised by the U.S.
15 Trustee with regard to the releases, exculpation and
16 injunction generally. We view those as confirmation issues
17 but we did want to address the releases.

18 THE COURT: Right. So, let's take this in pieces.
19 What seems to me -- and I understand we have got the issue on
20 the solicitation motion about the form of the ballot. Let's
21 hold that aside and come back to that afterwards. What
22 seemed to me to be things properly before me today would be
23 anything that relates to the actual disclosure of the
24 releases themselves or to the solicitation process, right.

25 What I don't want to do is approve a process today

1 that will lead to a confirmation issue that could have been
2 solved if only I had said something different today. So, to
3 the -- I understand there are times when people say that
4 those are confirmation issues and I want to be clear that
5 isn't my view. That if there is something the solicitation
6 materials I think approval of the materials is saying that
7 going forward with these materials won't, themselves, give
8 rise to a reason why I can't confirm the plan. Does that
9 make sense?

10 MS. SMITH: Yes. Absolutely, Your Honor, and that
11 is why we did want to address the releases and particularly
12 the opt-in mechanism.

13 THE COURT: Right. So, I know I have got that
14 issue. Then as to the -- look, there is this question -- I
15 saw the question about whose exculpated. I think that is
16 probably a confirmation issue, right, because the plan either
17 does or doesn't permissibly exculpate people who are or
18 aren't fiduciaries and as to acts that have or haven't
19 already occurred by the date of the order that, I think,
20 doesn't need to be resolved today. I think that is a
21 confirmation issue.

22 So, what you are saying is the only thing that is
23 really before me today is the opt-in, opt-out mechanism?

24 MS. SMITH: Yes.

25 THE COURT: Is there anyone who is here that

1 thinks there is something else that I ought to be resolving
2 today or has an objection to what the debtor proposes?

3 Ms. Lahaie.

4 MS. LAHAIE: Good morning, Your Honor. Meredith
5 Lahaie, Akin Gump Strauss Hauer & Feld, for the official
6 committee. Is now a good time, Your Honor, to speak to our
7 statement or would you prefer to move that to after the
8 releases discussion?

9 THE COURT: So, I have seen your statement. It
10 seems to me that your statement really purely is a
11 confirmation issue. If you want a chance to say what you want
12 to say I am happy to hear you but I am not sure there is --
13 am I right that there isn't an issue to be resolved, you just
14 sort of want to make a record.

15 MS. LAHAIE: You are exactly correct, Your Honor,
16 as is debtors counsel. There is no issue here that needs to
17 be resolved per say, but given our role as a fiduciary for
18 unsecured creditors and given the fact that the Class V
19 general unsecured creditor class is the class that will need
20 to accept this plan. We did think it was important for the
21 Court and for all the parties in interest to understand where
22 the committee lives on this plan today regarding purposes.

23 THE COURT: Okay. Understood. I have read your
24 statement but to the extent you want to make a record you are
25 certainly welcome to.

1 MS. LAHAIE: I will very quickly, Your Honor. And
2 as Ms. Smith notes and we agree, we have made significant
3 progress working with the debtors on appropriate consent
4 rights, on tweaks to the treatment of classes under the plan,
5 incorporation of protective insurance provisions, the
6 deletion of identification obligations, etc. But as Your
7 Honor is aware and I think all the parties in the courtroom
8 are now aware, we do have an issue of critical importance
9 that has not been resolved and that relates to the governance
10 that will control the liquidating trust including both the
11 trustee and the trust advisory board.

12 I think there is no dispute to date and especially
13 as we hear about the myriad of other issues that need to be
14 resolved in this case that unsecured creditors represent the
15 sole beneficiaries of the trust. Indeed, the debtors estimate
16 themselves to the best-case scenario for the recoveries under
17 these cases will likely be significantly less than 50 cents
18 on the dollar.

19 We have generally been patient, Your Honor. We
20 have been targeted, we have been thoughtful about the issues
21 that we bring to the Court and that we ask the Court to
22 intervene on. And we have made every effort to work with the
23 debtors to move these cases constructively forward but we do
24 think that now is the time, now that we are finally at the
25 plan stage and the plan process, for unsecured creditors to

1 control their destiny and to have the ability to dictate how
2 those assets are resolved and how they are distributed to
3 unsecured creditors.

4 Your Honor will, of course, know that the vast
5 majority of the cases that address these kinds of issues have
6 found that the committee, as the representative for the true
7 economic beneficiaries of the trust, should be controlling
8 both the trustee and the designation of the advisory board.
9 We cited a number of cases in our statement. Obviously, that
10 list is not exclusive.

11 As we state in our pleading, control over trust
12 governance is consistent with how Courts have interpreted
13 1123(a)(7), analogous to how a Chapter 7 Trustee would be
14 appointed. The dialog, of course, does remain open with the
15 debtors. We are hopeful and optimistic that we will resolve
16 the issue ahead of confirmation. We hope to get there but we
17 do want the Court and the parties in interest to know that if
18 we don't get there we will be objecting to confirmation.

19 Given the criticality of this issue to the
20 committee and unsecured creditors we will also be
21 recommending that unsecured creditors vote to reject the plan
22 if we are not able to resolve this issue. The Court may have
23 seen that the debtors, in connection with the solicitation
24 materials, will be including a letter from the committee that
25 advises them of the concerns that the committee has

1 identified and urges folks to hold off on voting on the plan
2 until the issue has either been resolved or not resolved at
3 which point we will file a subsequent letter on the docket
4 making a formal recommendation to unsecured creditors.

5 Of course, as I noted, Class V is required here to
6 be the impaired accepting class under the plan. I am hopeful
7 and optimistic that we will be able to resolve this issue and
8 I am hopeful that the debtors will not allow this issue to
9 derail all of the parties hard work on the plan process.

10 THE COURT: Thank you, Ms. Lahaie.

11 MS. LAHAIE: Thank you.

12 THE COURT: Let me hear from anyone who wants to
13 be heard.

14 Ms. Good.

15 MS. GOOD: Good morning, Your Honor. Katie Good
16 from Potter Andreson & Corroon on behalf of MFN Partners and
17 Mobile Street.

18 We are glad that we could work with Ms. Smith and
19 her colleagues to include language in the disclosure
20 statement that resolved our concerns for purpose of today's
21 hearing. That included some language with respect to the IBT
22 claims and we will continue to work with the debtors and IBT
23 to finalize that language after today's hearing.

24 In response to what the committee just stated, I
25 wanted to rise because we also raised issues regarding

1 governance of the liquidating trust and the liquidating trust
2 board, and in particular any conflict in recusal procedures
3 for the governance and members of that board in our limited
4 objection. And while that may be an issue for confirmation,
5 we do disagree with the committee's position that they can
6 completely control their destiny.

7 Particularly, we believe that the case law makes
8 exceptions where there are potential conflicts. As a result,
9 the language that we worked with the debtors to include in
10 the disclosure statement, we believe, provides information to
11 creditors to highlight our concerns so that creditors have
12 the ability to review the plan supplement and in particular
13 any recusal procedures that may be included in the
14 liquidating trust agreement and governance documents as they
15 vote on the plan.

16 With those additions we are resolved for purpose
17 of today; of course, reserving all of our rights to raise
18 these issues with respect to the confirmability of the plan
19 at the confirmation hearing.

20 THE COURT: Thank you, Ms. Good.

21 Ms. Kaufman.

22 MS. KAUFMAN: Good morning, Your Honor. Susan
23 Kaufman for the Teamsters.

24 As has been highlighted to the Court, there is
25 still an open issue with respect to certain language in the

1 disclosure statement that was added late last night with
2 respect to MFN. We didn't see this language until shortly
3 before it was filed with the Court. We have committed to
4 work with both MFN and the debtors to come up with agreeable
5 language, but to answer Your Honor's question that Your Honor
6 posed to debtors counsel does anyone have an issue with any
7 of the language that is presently in the version before the
8 Court the answer is yes, we still do, but we are committed to
9 working with the debtors as soon as possible after the
10 hearing to come up what agreeable language.

11 THE COURT: Okay, very well. That is very
12 helpful.

13 MS. KAUFMAN: Thank you, Your Honor.

14 THE COURT: Thank you, Ms. Kaufman.

15 Anyone else wish to be heard?

16 (No verbal response)

17 THE COURT: Okay. Ms. Smith, I take it your
18 rights are, obviously, reserved with respect to the issues
19 that others have raised. This all sounds to me like falling
20 into two categories. One, things that you all expect to
21 resolve without my help and things that aren't before me
22 today and where I will do the least harm to the process if I
23 say nothing. So, I will try to follow that admonition and
24 allow the process to play itself out.

25 MS. SMITH: That's perfect. Thank you, Your

1 Honor.

2 THE COURT: Okay, very well.

3 MS. SMITH: So, you saw our reply. I don't think
4 it's anything that the debtors necessarily need to supplement
5 or say on the governance piece. Yes, we are committed to
6 working with parties to try and resolve that.

7 So, again, our understanding is the only issue
8 really before Your Honor today which is the opt-in mechanism
9 of the releases. The debtors plan does propose, in our view,
10 a consensual opt-in mechanism and contrary to the U.S.
11 Trustees assertions the opt-in is not acceptance by silence
12 and does require an affirmative act on behalf of parties.

13 For those non-voting classes, they receive an opt-
14 in form that they must complete and return. If its returned
15 with the box checked they have opted in, if its returned
16 without the box checked or no actions taken at all they,
17 obviously, do not opt-in.

18 THE COURT: Okay.

19 MS. SMITH: For voting parties, and this is where
20 the trustee raised its objection, that accept to the plan
21 they are deemed to have opted in and consented to the third-
22 party release regardless of whether they also checked that
23 opt-in box on their ballot. All of the materials are
24 abundantly clear and up front as to the release provisions,
25 related definitions, and consequences of opting in or not.

1 THE COURT: Am I right, this is the only issue
2 that is left?

3 MS. SMITH: Yes.

4 THE COURT: So, Ms. Smith, on this issue -- look,
5 I didn't resolve it in Smallhold, but I said a few words
6 that, you know, hint at my concerns here. Can I ask you this
7 question: Imagine I were to approve the form in you form and
8 then I had, at confirmation, one of these general unsecured
9 creditors who got to that podium and said, Judge, I voted in
10 favor, I saw that language but, look, the reason I voted in
11 favor is because I think the treatment of my allowed
12 unsecured claim is perfectly appropriate. It proposes to pay
13 me X, I think X is fair, I voted in favor for that reason.

14 I am against the release, that is a confirmation
15 issue. I am here at confirmation and this plan is
16 unconfirmable and if you confirm it over this objection I
17 intend to appeal and say this is a non-consensual release.
18 What am I supposed to do then?

19 MS. SMITH: Again, the creditor was well aware,
20 well-informed, and accepting the plan is accepting the plan
21 in its entirety. It's not --

22 THE COURT: So, let's talk about that because I
23 don't -- I see you say that. I know there are occasional --
24 there is some language in some cases that say that but I
25 don't really think that is right. Let's explore it, right.

1 Imagine we have got a case in which there's a creditor who is
2 a landlord with two pieces of real property that are leased
3 to the debtor; one lease is assumed and assigned to the
4 buyer, the other is rejected.

5 The creditor is perfectly -- the unsecured claim
6 is allowed, the creditor is perfectly happy with the
7 treatment of their allowed unsecured claim but doesn't
8 believe that the cure amount is correct and its in the plan.
9 Can we say to that landlord if you vote in favor of the plan
10 you may not raise the fact that the cure amount is incorrect.

11 MS. SMITH: No, because it's a separate mechanism
12 to object to the cure amount.

13 THE COURT: Well, why couldn't someone respond to
14 that by making just the point you just did. I have offered
15 you a package deal, the plan you either accept it or you
16 don't, and your choice is to reject it but if you accept the
17 plan, if you vote in favor of it I don't want to hear from
18 you that you don't like the cure amount. If you can't do
19 that then why can you do what you are doing?

20 MS. SMITH: Well, a party could object to the
21 release as your noting and that could operate as an effective
22 opt-out of the release.

23 THE COURT: So, that is my problem. I agree with
24 that, that is the right answer. The problem is you are asking
25 me to approve a disclosure statement that, effectively, is

1 making a false statement to the creditor that if you vote in
2 favor, you can't be heard further and its not right. I am not
3 comfortable approving language telling a creditor something
4 that isn't true. You see my problem?

5 MS. SMITH: Yes. Understood, Your Honor. I
6 think we are all kind of navigating this.

7 THE COURT: I understand that and everyone is
8 doing the best they can. I am not faulting anyone for raising
9 this issue but I am just trying to --

10 MS. SMITH: We hear Your Honor and we will
11 certainly take your guidance. Again, the last thing that we
12 want is to be at confirmation months from now and having to
13 kind of backtrack and resolicit.

14 THE COURT: Right. That is what I am trying to
15 avoid too. Look, there is -- you are right that the
16 consequences of how we deal with the fallout of Perdue is
17 we're all trying to figure out. I am not saying that the
18 world in which I am living is the world that, as a matter of
19 policy, I think is the best bankruptcy policy but I think I
20 am bound by the law in these regards and want to just do this
21 in a way that is logical and coherent and, most of all, is
22 clear. I think whatever the rules are everyone will be able
23 to follow and I just sort of want to do it in a way that is
24 clear and simple and coherent.

25 MS. SMITH: Understood, Your Honor. Obviously, we

1 are not trying to do anything that would confuse our
2 creditors either. So, we are fine to revise to make it an
3 affirmative opt-in for the voting parties.

4 THE COURT: Okay. So, not to do the U.S. Trustees
5 work for it, but what is left?

6 MS. LEAMY: Good morning, Your Honor. Jane Leamy
7 for the U.S. Trustee.

8 Thank you and thank you to the debtors for that. I
9 think that resolves the issues that were remaining with
10 respect to the U.S. Trustees objection.

11 THE COURT: Okay.

12 MS. LEAMY: I would just request that we be able
13 to review the language that was submitted to the Court.

14 THE COURT: It sounds like there is no objection
15 to that. In any event, the parties need to work out language
16 to resolving this MFN Teamsters language issue, right?

17 MS. SMITH: Correct. We will certainly make sure
18 that all parties are on board before we submit.

19 THE COURT: All right.

20 MS. LEAMY: The one caveat to that, Your Honor,
21 there were certain named parties that are deemed to consent
22 to the releases. Presumably those parties will consent but
23 its not clear in the documents. I believe it's the committee
24 and certain other parties.

25 MS. SMITH: Yes. As Your Honor likely saw, the

1 releases are still bracketed because the committee is
2 completing their investigation. We are happy to disclose at
3 confirmation and upon resolution of that which parties have
4 affirmatively consented to the release.

5 THE COURT: Okay. So is there an issue that I
6 need to resolve at this stage then?

7 MS. LEAMY: As long that they will affirmatively
8 consent and if they don't they're not bound by the releases.

9 THE COURT: Ms. Lahaie.

10 MS. LAHAIE: Meredith Lahaie for the committee.

11 I can confirm that we will have completed our
12 investigation ahead of confirmation and will be prepared to
13 confirm that we opt-in at that time. Presumably that is
14 where we are going to land.

15 THE COURT: So, if there isn't a dispute for me to
16 resolve I am happy to do nothing which is really what I do
17 best.

18 MS. SMITH: Otherwise, unless anyone has anything
19 else I think that was it for today. We will revise
20 accordingly and we will submit a revised order and disclosure
21 statement to Chambers.

22 THE COURT: So, from the debtors perspective that
23 resolves the agenda for today?

24 MS. SMITH: Yes.

25 THE COURT: Is there any other party in interest

1 that would like to be heard with respect to any other matter?

2 (No verbal response)

3 THE COURT: All right. Let me thank the parties.

4 Look, I appreciate that not everything in this case is
5 consensual but an awful lot is. I appreciate that as a result
6 of an awful lot of hard work and to the extent you bring me
7 disputes to resolve that is the job for which I signed up and
8 I am happy to do it and hope to do it, you know, in a way --
9 there is no way to do that in a way that makes everybody
10 happy, but I do hope to do it in a way that allows the case
11 to proceed in an orderly fashion. So, all of the help you
12 have all provided in that process is enormously helpful and
13 appreciated.

14 So, in the absence of anything else thanks to all
15 of you. I guess I will be seeing a fair amount of you in the
16 coming months. So, if anything were to arise that requires
17 our attention you know where to find us. With that we are
18 adjourned. Thank you.

19 MS. SMITH: Thank you, Your Honor.

20 (Proceedings concluded at 10:10 a.m.)

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CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling

November 21, 2024

William J. Garling, CET-543

Certified Court Transcriptionist

For Reliable

/s/ Tracey J. Williams

November 21, 2024

Tracey J. Williams, CET-914

Certified Court Transcriptionist

For Reliable